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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,462	10/21/2004	Takashi Yamaguchi	09867/0201568-US0	3957
7278	7590	11/18/2009		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER DEODHAR, OMKAR A	
			ART UNIT	PAPER NUMBER
			3714	
			MAIL DATE	DELIVERY MODE
			11/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/502,462

Applicant(s)

YAMAGUCHI, TAKASHI

Examiner

OMKAR A. DEODHAR

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Peter D. Vo/
Supervisory Patent Examiner, Art Unit 3714

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments have been considered but are not persuasive. Applicant argues that the modification in view of Lyczek fails to teach the claimed course position information. (Remarks, Page 9). Applicant contends that Lyzeck renders a device with proximity sensors used autonomously by each vehicle in the system and hence, fails to teach the claimed invention. (Remarks, Page 9). Examiner respectfully disagrees. As pointed out in the Office Action, Lyczek's relevant teaching is sensors enabling the toy to detect objects in its path & output signals activating switches so the toy can change its direction. Modifying Wolf in view of DeAngelis with this element is merely a substitution of known elements yielding the predictable results of remote-control trains utilizing sensors to avert collisions. Applicant argues that unlike the claimed invention, Katzer acts as an intermediary for all user commands and fails to transmit information to the model or controller to adjust settings that influence model or controller responses. (Remarks, Page 10). Examiner respectfully disagrees. By Applicant's own characterization, Katzer's intermediary functions would still transmit information to adjust settings influencing model behavior. Applicant also argues that the combination fails to teach that data generated by the accessory device causes each controller to change a selected data map to an alternate data map, as in claims 17 & 18. (Remarks, Page 11). Examiner respectfully disagrees. As pointed out, in response to data generated by the accessory device, the controller may issue a stop command, halting movement. This command is selected from a possible set of data maps for model movement. Thus, the claimed feature is indeed taught. More importantly, the claims recite many instances of functional language. See for example claim 1 reciting "device for" a number of times. Such functional language fails to positively limit the claims & only requires prior art ability to perform. Since the prior art devices are clearly able to perform the functional steps, Applicant's arguments are further unpersuasive. Applicant is encouraged to positively recite claim limitations.